

QUESTIONNAIRE FOR PROSPECTIVE TREATY INVESTOR

(E-2)

EMPLOYEES of Treaty investors: your employer must complete this questionnaire if one is not already on file in the Consular Section in Paris.

GENERAL INSTRUCTIONS

Potential treaty investors and their employees ("Applicants") applying for a Treaty Investor (E-2) visa, must first prove that they have a qualified U.S. business (the "Enterprise") under the terms of the treaty between the United States and the Applicant's country of nationality, and under the U.S. immigration laws and regulations. Citations in this questionnaire refer to the provisions of the Code of Federal Regulations ("CFR").

Please type or print the answers requested on the questionnaire, inserting the dollar amounts, percentages, etc., in the spaces provided. If an answer requires more space than that provided, please attach additional pages, indicating in the space provided "continued on page X" or "see tab X." If a question does not apply, write "N/A" in the space provided for the answer. Place an "x" in all spaces provided in the questionnaire to indicate the documents being submitted, and label each document to identify which answer it is intended to support. Legible photocopies of documents are acceptable and need not be notarized or certified.

Careful preparation and organization of your questionnaire will help avoid delays in processing your visa request. If an appointment is necessary, one will be scheduled and the Applicants notified of their appointment date, as requested in Part V of this questionnaire, for initial applications for visas.

I. NATURE OF THE INVESTMENT

A. INVESTMENT

An applicant who is seeking to qualify for investor visa status must have invested or be actively in the process of investing in the Enterprise. The investor must show control of the investment funds or property (the "Investment") and that the Investment has already been transferred to the United States for use by the Enterprise. The mere deposit of uncommitted funds in a U.S. bank account is not sufficient. (22 CFR 41.51. N5)

1. What is the value, in U.S. dollars, of the Investment (by ALL investors) in the U.S. Enterprise?

\$ _____

2. What is the Investment, in U.S. dollars, by Treaty Country Nationals or Treaty Country Firms in the Enterprise?

\$ _____

3. What PERCENTAGE of the Investment in the Enterprise has been contributed by Treaty

Country Nationals or Treaty Country Firms?

4. Generally describe all assets which have been purchased as part of the Investment in the Enterprise:

Brief Description

Purchase Price

Land:

Buildings :

Brief Description

Purchase Price

Original inventory:

Equipment:

Other Assets: **

** Which have a market value and are part of the Investment in the Enterprise.

5. What is the amount of all cash deposited by the Treaty Country National or the Treaty Country firms in the U.S. banks as part of the Investment for the use of the Enterprise?

\$ _____

(Attach a business plan, minutes of the corporation, or other evidence showing the commitments the cash is intended to cover.)

6. List below, by investor, any inventory, equipment, or other tangible property, other than cash, delivered to the Enterprise as part of the Investment: (Attach additional sheets, if necessary, for each investor.)

NAME OF INVESTOR: _____

Type

Estimated
Fair Market Value

Original Purchase
Price

Inventory: _____

Equipment: _____

Other assets ** _____

****Which have a market value and which are part of the Investment in the Enterprise.**

7. If any part of the Investment was or will be obtained by borrowing in the form of mortgages or loans secured by commercial assets of the Enterprise, state the amount of such mortgages and loans:

\$ _____

Attach to this questionnaire a list of all such mortgages or loans, giving a description of the terms of the agreement or any collateral arrangements affecting such mortgages or loans; naming the parties to the agreement or the collateral arrangement may cause the liability on any debt incurred to secure the funds to make the Investment to shift from the investors who are Treaty Country Nationals or Treaty Country Firms. If requested, Applicants should be prepared to bring to their visa interview or provide to the Treaty Visa officer copies of any such loans, mortgage agreements, promissory notes, security agreements, guarantees, or any other agreements which cause or can cause the liability on any debt incurred to secure the funds used to make the investment to shift from the investors who are Treaty Country Nationals or Treaty Country Firms.

NOTE: Indebtedness such as mortgage debt or commercial loans secured by Enterprise assets cannot count toward the Investment, since the Investment is not considered "at risk" for such amounts. (22 CFR 41.51, N5. 1-2)

8. If any funds used to make the Investment were obtained by borrowing in the form of loans or mortgages secured by the **personal** assets or signature of an **investor**, state the amount of such loans or mortgages for each investor:

If requested, Applicants should be prepared to bring to their visa interview or provide to the Treaty Visa officer copies of any such loans, mortgage agreements, promissory notes, security agreements, guarantees, or any other agreements which cause or can cause the liability on any debt incurred to secure the funds used to make the investment to shift from the investors who are Treaty Country Nationals or Treaty Country Firms.

Name	Nationality	Amount
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9. As evidence of the investor's right to the funds or property contributed to the Investment, please attach:

a) Copies of one or more of the following: bank statement, financial statement, annual report, or other proof that the investor is the source of the invested funds

And, if applicable,

b) Copies of one or more documents showing the investor's ownership of inventory, equipment, or other property contributed to the Enterprise.

10. To establish that the Investment was transferred by the Treaty Country National or Treaty Country Firm to the U.S. for the use of the Enterprise, please attach either:

a) A copy of the annual report of Treaty Country Firm and public announcement of corporate acquisition of the Enterprise

Or

b) Copies of one or more of the following: bank statement and cancelled checks, wire transfer receipts, or U.S. Customs' receipts, showing transfer of funds to the Enterprise or to an escrow account established for acquisition of the Enterprise

And, if applicable,

c) Copies of documents showing shipment by the investor of contributed inventory, equipment, or other property to the Enterprise.

B. REAL, OPERATING, COMMERCIAL ENTERPRISE

The investment must be in an actually operating commercial enterprise, or one that is in the active process of formation, not merely constituting a "paper" corporation. Passive speculative investment in stock or real estate held for appreciation in value is not sufficient. (11 CFR 41.51, N5.2)

1. If the Enterprise is already operating in the United States:

a) What was the amount, in U.S. dollars, of its gross receipts or sales for the last year?
\$ _____

b) What was the amount in U.S. dollars of its net income for the last year?
\$ _____

2. If the Enterprise has not yet begun operating in the United States, list the steps which have been taken in the process of forming the Enterprise and in preparing to begin operations:

C. SUBSTANTIAL INVESTMENT

The investment by Treaty Country Nationals or Treaty Country Firms generally must be (1) more than half the value of the Enterprise, OR (2) the amount necessary to establish a new enterprise of the type contemplated, OR (3) so great as to warrant issuance of E-2 visas even though the investment is not more than half of the total value of the Enterprise. (This generally applies when the Enterprise is a very large, publicly held corporation.)

The investor needs to satisfy the requirement of "substantially" in only one of these ways. (22 CFR 41,51. N5.3-1)

1. If the "substantiality" requirement is to be satisfied by proving that the Treaty Country Nationals or Treaty Country Firms have invested more than half the value of an already established Enterprise, then the following must be answered:

a) What is the current value of the Enterprise in U.S. dollars?

\$ _____

How was this value determined:

b) The amount of the Investment by Treaty Country investors represents what PERCENT of the Enterprise.

How was this percentage established:

2. If the "substantiality" requirement is to be satisfied by proving that the Treaty Country Nationals or Treaty Country Firms have invested the amount necessary to establish a new Enterprise, then the following must be answered:

a) What is the estimated amount, in U.S. dollars, necessary to establish a new Enterprise of the type contemplated?

\$ _____

b) Explain how you have determined this estimate. Also list any documents which the Applicant will provide, if requested, to the E visa treaty officer which support this determination. (Materials which have been helpful in the past have included a business plan along with trade association statistics, correspondence with local Chambers of Commerce, tax returns or financial statements showing prior experience of the investor with a similar business.)

c) The amount of the Investment by Treaty Country investors represents _____ PERCENT of the Enterprise.

How was this percentage determined?

3. If the amount invested is so great as to warrant issuance of E-2 visas even though the Investment is not more than half of the total value of the enterprise, please provide:

- a) Proof that the investor in the Enterprise is a very large Treaty Country Firm;
- b) Proof that the Treaty Country Firm is capable of multi-million dollar capital transactions;
- c) Proof that the amount of the Investment is very large (over \$1 million);
- d) Provide a compelling reason why the proportionality test should not be applied.

D. ENTERPRISE IS NOT MARGINAL

To qualify for E status, the Treaty Country National must not be investing in a marginal enterprise solely for the purpose of earning a living. A Treaty Country National is not entitled to E-2 classification if the Investment, even if substantial, will return only income which will provide a living for the investor and his or her family. (22 CFR 41.51, N11) There is no single method to prove that an Investment is not marginal. The consular officer must be convinced that the operation is not marginal.

1. The investor may demonstrate that the Enterprise will expand U.S. job opportunities. To prove the ability of the Enterprise to employ U.S. citizens and U.S. Legal Permanent Residents, submit one or more of the following:

- a) If an existing Enterprise, proof of the wages paid by the Enterprise, as shown in the most recent U.S. Employment Tax Return.
- b) If a new Enterprise, list the names of U.S. nationals hired or who will be hired to staff the Enterprise. The investor should be prepared to provide evidence of the citizenship or legal permanent resident status of these employees. The applicant may provide as evidence copies of the U.S. Immigration Form I-9 for each U.S. national employee hired or in the process of being hired by the Enterprise.

2. The investor may demonstrate substantial income derived from sources other than the Enterprise, which will continue after the Investment is made and which demonstrate that the investor is not reliant on the U.S. investment to provide a living.

a) What is the amount, in U.S. dollars, of the investor's annual income, other than from the Enterprise, which will continue after the investment is made?
\$ _____

b) What are the sources of the investor's annual income, other than from the Enterprise, which will continue after the Investment is made:

c) Attach proof of the investor's annual income, other than from the Enterprise, which will continue after the Investment is made. This proof may be copies of bank statements, interest statements, rental agreements, evidence of dividends, a personal financial statement, or income.

d) Provide evidence of the annual cost of running the household for the investor. Include food, housing, education, and transportation costs incurred by the investor and his or her dependents.

E. THE INVESTOR CONTROLS THE ENTERPRISE

The investor must "develop and direct the operation of an Enterprise." To meet the "develop and direct" requirement, the investor should have a controlling interest in the Enterprise. An interest of 50 percent or less usually will mean that the investor does not have the requisite control, particularly in smaller enterprises. An equal share of the investment, such as an equal partnership, generally does not give controlling interest. (22 CFR 41.51, N5. 5)

Please check the box or boxes below which describe the investor's circumstances. Attach to this questionnaire any requested documentation:

- _____ 1. A single Treaty Country National or Treaty Country Firm owns more than 50% of the Enterprise.
- _____ 2. Two Treaty Country investors each own 50% of the enterprise and they have entered into a written agreement, signed by both parties, granting operational control of the enterprise to one of them. Submit a copy of the agreement.

(NOTE: MORE THAN TWO INVESTORS CANNOT ESTABLISH THE REQUISITE CONTROL THROUGH AN OPERATIONAL AGREEMENT.)

- _____ 3. A Treaty Country Firm is making a corporate investment in a U.S.-based corporation. Although the foreign corporation does not own more than 50% of the stock of the U.S. corporation, it effectively controls the U.S. corporation. Provide evidence of this control. (One method has been to show evidence of the control of the election of the board of directors.)

F. SUPPORTING EVIDENCE FOR TREATY INVESTOR

Evidence necessary to support a request for Treaty Investor status may vary according to the Enterprise's business objectives. In addition to the materials already specifically requested in this questionnaire, the following materials have been submitted in the past to support requests for Treaty Investor status.

(Place an "x" in the space provided to indicate which documents are attached, or place an

"np" in the space to indicate that the document is not being provided and explain why.)

If the Enterprise is a corporation or partnership, U.S. Income Tax Returns for the most recent tax year for the Enterprise;

If the Enterprise is a sole proprietorship, the most recent U.S. tax return for the individual who is the owner of the Enterprise;

If the Enterprise is a corporation, the most recent Information Return of a 25% Foreign Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business (U.S. Internal Revenue Service Form 5472).

The most recently prepared income statement, prepared in the normal course of business, describing the financial situation of the Enterprise;

The most recently prepared annual report describing the business and financial operations of the Enterprise;

If the Enterprise has not yet begun operations in the United States, provide evidence that the Enterprise is close to the start of actual business operations.

(Past examples of evidence have included leases or purchase agreements, contracts, with suppliers and customers, licenses to do business, and evidence that staff has been hired and premises located.)

2. If the Investment has been in the purchase or other acquisition of an existing Enterprise, one or more of the following must be submitted to support the value of the existing Enterprise:

Place an "x" in the space provided to indicate which documents are attached or place an "np" in the space to indicate that the document is not being provided. If the document is not being provided, briefly explain why.

_____	Purchase agreement
_____	Independent appraisal
_____	Tax valuation
_____	Other Documentation (which describes and provides specific evidence of the value of the Enterprise)

II. NOTIFICATION

To receive notification of the date and time for any necessary interview or any other information about my visa status, I request notification by (check one or both of the following):

_____ Telephone	_____
	(Paris number)
_____ Fax	_____

_____ Letter to	_____
	(name)

	(address)
E-mail	_____

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III. DECLARATION

The information furnished in this questionnaire is true and correct to the best of my knowledge and belief, as of the date given below. All photocopies of documents submitted with this Questionnaire for Prospective Treaty Investor are true and complete copies of the original documents, and all statements and information contained in the submitted documents are correct to the best of my knowledge and belief, as of the date given below.

Signature: _____

(Typed or Printed Name): _____

Title: _____

Date: _____

Telephone: _____

Fax: _____

E-mail: _____

THIS FORM MUST BE SIGNED BY AN APPROPRIATE OFFICIAL OF THE COMPANY APPLYING FOR TREATY TRADER STATUS, OR BY THE INDIVIDUAL INVESTOR.

AS WITH ANY VISA APPLICATION, A CONSULAR OFFICER HAS THE AUTHORITY TO REQUEST ADDITIONAL DOCUMENTATION IF NECESSARY.

PLEASE RETAIN A PHOTOCOPY OF THE COMPLETED QUESTIONNAIRE AND SUPPORTING DOCUMENTS FOR YOUR FUTURE REFERENCE.

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